Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 82-183)

Customs Delegation Order No. 65

Customs Establishes Order of Succession of Persons To Act as Commissioner of Customs

By virtue of the authority vested in me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955, (20 FR 2875), it is hereby ordered that the following officers of the U.S. Customs Service, in the order of succession enumerated, shall act as Commissioner of Customs, in the event of an enemy attack or during the absence or disability of the Commissioner of Customs, or when there is a vacancy in such office:

1. The Deputy Commissioner of Customs.
2. The Assistant Commissioner (Enforcement).
3. The Assistant Commissioner (Inspection and Control).
4. The Assistant Commissioner (Commercial Operations).
5. The Deputy Commissioner of Customs for International Affairs.
6. The Comptroller.
7. The Assistant Commissioner (Internal Affairs).

By virtue of authority vested in me by said Treasury Department Order No. 129 (Revision No. 2), and Treasury Department Order No. 165, Revised (T.D. 5364, 19 FR 7241) there is hereby delegated to the Regional Commissioners of Customs, District Directors of Customs, and Port Directors of Customs, in the event of an enemy attack on the continental United States, authority to perform any function of the Commissioner of Customs which is necessary to insure continuous performance of essential functions otherwise assigned to such officers. This delegation of authority will remain in effect until notice has been received from proper authority that it has been terminated.

This order supersedes Customs Delegation Order No. 63, dated September 15, 1981 (T.D. 81-250, 46 FR 46738).

Dated: September 28, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, October 5, 1982 (47 FR 44036)]

(T.D. 82-184)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: September 29, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Berry Transport Inc., 5315 NW St. Helens Rd., Portland, OR; motor carrier; Mid-Century Ins. Co. (PB 9/20/71) D 8/7/82 [1]	Aug. 8, 1982	Aug. 11, 1982	Portland, OR $25,000
Bestway Cartage Co., Inc., 195 W. Industrial, Memphis, TN; motor carrier; Hartford Accident & Indemnity Co.	July 29, 1982	Aug. 16, 1982	New Orleans, LA $25,000
Big Mac Trucking Co., 922 Maxine, Houston, TX; motor carrier; Washington International Ins. Co. (PB 1/6/76) D 4/29/82 [2]	Apr. 13, 1982	Apr. 29, 1982	Houston, TX $25,000
Commercial Carriers, Inc., 20300 Civic Center Dr., Southfield, MI; motor carrier; Fidelity & Deposit Co. of MD (PB 7/16/79) D 8/13/82 [3]	July 1, 1982	Aug. 13, 1982	Detroit, MI $50,000
Compton Trucking, Inc., 5300 Kennedy Rd., Forest Park, GA; motor carrier; U.S. Fidelity & Guaranty Co.	Aug. 18, 1982	Aug. 19, 1982	Savannah, GA $50,000
The Copeland Co., Inc., P.O. Box 13064, Port Everglades, Fort Lauderdale, FL; motor carrier; Old Republic Ins. Co. (PB 7/16/80) D 8/2/82 [4]	July 28, 1982	Aug. 2, 1982	Miami, FL $25,000
Crown Transportation, Inc., 8333 East Freeway, Houston, TX; motor carrier; Washington International Ins. Co	Aug: 2, 1982	Aug. 12, 1982	Houston, TX $50,000
GWG Ltd., Edmonton, Alberta, Canada; motor carrier; Transamerica Ins. Co. D 8/11/82	July 31, 1972	Oct. 5, 1972	Laredo, TX $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Gordon Fast Freight Inc., 2205 Pacific Hwy E., Tacoma, WA; motor carrier; Industrial Indemnity Co.	Aug. 11, 1982	Aug. 11, 1982	Seattle, WA $25,000
Grane Transportation Lines Ltd., 1001 S. Laramie Ave., Chicago, IL.; motor carrier; Ins. Co. of North America	June 16, 1982	Aug. 19, 1982	Chicago, IL $50,000
J. T. Greitzer Brokers, dba: Greitzer Brokers, 4635 Border Village Rd., San Ysidro, CA; freight forwarder; St. Paul Fire & Marine Ins. Co. (PB 7/24/78) D 8/25/82	July 26, 1982	Aug. 25, 1982	San Diego, CA $50,000
Laviero Trucking, Inc., 494 Kimberly Ave., New Haven, CT; motor carrier; The Aetna Casualty & Surety Co.	Apr. 15, 1982	Aug. 20, 1982	Bridgeport, CT $25,000
Lee-Vac Corp., P.O. Box 2607, Morgan City, LA; water carrier; St. Paul Fire & Marine Ins. Co. (PB 5/7/76) D 8/13/82 [5]	July 22, 1982	Aug. 13, 1982	New Orleans, LA $100,000
Lindholm Farms, Inc., P.O. Box 279, Georgewest, TX; motor carrier; Aetna Ins. Co. D 8/4/82	Oct. 29, 1981	Nov. 17, 1981	Laredo, TX $50,000
Maiers Motor Freight Co., 875 E. Huron, Vassar, MI; motor carrier; St. Paul Fire & Marine Ins. Co.	July 30, 1982	Aug. 3, 1982	Detroit, MI $50,000
Marine Drop Box Co., 6849 N.E. 47th, Portland, OR; motor carrier; Oregon Automobile Ins. Co. (PB 8/24/81) D 7/13/82 [6]	July 14, 1982	July 20, 1982	Portland, OR $25,000
Melton Truck Lines, Inc., P.O. Box 7666, Shreveport, LA; motor carrier; Aetna Casualty & Surety Co. (PB 5/7/80) D 5/4/82	Apr. 14, 1982	May 5, 1982	Houston, TX $25,000
Metro Air, Inc., P.O. Box 19011, Omaha, NB: air freight; Old Republic Ins. Co.	July 7, 1982	Aug. 2, 1982	Chicago, IL $25,000
Moore's Express, P.O. Box 19088, Charlotte, NC; motor carrier; American Manufacturers Mutual Ins. Co.	July 23, 1982	Aug. 3, 1982	Wilmington, NC $25,000
Mountain Pacific Transport Ltd., 241 Schoolhouse St., Coquitlam, B.C. Canada; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 1/22/79) D 8/2/82 [7]	July 5, 1982	Aug. 2, 1982	Seattle, WA $25,000
L. F. Oakes & Sons Transport Div., Ltd., R.R. #3, Bath, New Brunswick, Canada; motor carrier; Royal Ins. Co. of America	July 16, 1982	Aug. 11, 1982	Portland, ME $25,000
James H. Oehlke, dba: Oehlke Truck Line, P.O. Box 151, Rosenberg, TX; motor carrier; Reliance Ins. Co. D 8/6/82	Feb. 6, 1981	Feb. 6, 1981	Houston, TX $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Porter International, Inc., Custom House Broker, Foreign Freight Forwarder, P.O. Box 81488, San Diego, CA; freight forwarder; Old Republic Ins. Co. (PB 12/29/80) D 8/25/82 [8]	July 27, 1982	Aug. 25, 1982	San Diego CA $50,000
Tumi International, Inc., 9308 N.W. 13th St., Miami, FL; motor carrier; St. Paul Fire & Marine Ins. Co.	June 22, 1982	Aug. 4, 1982	Miami, FL $25,000
West-Trade Transport Ltd., 2020 Yukon St., Vancouver, B.C., Canada; motor carrier; St. Paul Fire & Marine Ins. Co.	May 15, 1979	June 7, 1979	Seattle, WA $25,000

[1] Surety is General Ins. Co. of America.
[2] Surety is St. Paul Fire & Marine Ins. Co.
[3] Surety is American Casualty Co. of Reading, PA
[4] Surety is Washington International Ins. Co.
[5] Principal is Lee-Vac Ltd.
[6] Surety is Hartford Accident & Indemnity Co.
[7] Principal is Mountain Pacific Transport (Edmonton) Ltd.
[8] Surety is Peerless Ins. Co.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 82-185)

Customs Approved Public Gauger

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Thornton Laboratories, Inc., 1145 East Cass Street, Tampa, Florida 33601, to gauge imported petroleum and petroleum products in the Customs Districts of Miami, New Orleans and Houston, in accordance with the provisions of section 151.43, Subpart C, of the Customs Regulations is approved.

Dated: October 4, 1982.

A. PIAZZA
(For Director, Entry Procedures and Penalties Division).

[Published in the Federal Register, October 8, 1982 (47 FR 44653)]

(T.D. 82-186)

Customs Approved Public Gauger

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Thionville Surveying Company, Inc., 5440 Pepsi Street, New Orleans, Louisiana 70183, to gauge imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43, Subpart C, of the Customs Regulations is approved.

Dated: October 4, 1982.

A. PIAZZA
(For Director, Entry Procedures
and Penalties Division).

[Published in the Federal Register, October 8, 1982 (47 FR 44653)]

U.S. Customs Service

General Notice

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Acrylic Blankets

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: The Customs Service has received a petition from a domestic interested party requesting the reclassification of certain imported acrylic blankets. This document invites comments with regard to the correctness of the current classification.

DATES: Interested persons may comment on this petition, and comments (preferably in triplicate) must be received on or before December 6, 1982.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Textiles Asociados del Caribe, Inc., an American manufacturer of acrylic blankets. The petitioner contends that certain imported blankets, which are currently classified under the provision for other bedding, not ornamented, of man-made fibers, blankets, in item 363.85, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are more appropriately classified under the provision for other bedding, ornamented, of man-made fibers, blankets, in item 363.25, TSUS, which provides for a higher rate of duty.

The blankets which are subject of the petition are composed of 85 percent virgin acrylic and 15 percent cotton with printed designs (usually animals) on either side. They are edged by a lockstitched fabric border.

The petitioner's claim for reclassification is based on its interpretion of the term *"ornamented"* which is defined in Schedule 3, headnote 3, TSUS. That provision provides in revelant part:

3. For the purposes of the tariff schedules—

(a) The term *"ornamented"*, as used with reference to textile fabrics and other articles of textile materials, means fabrics and other articles of textile materials which are ornamented with—

(i) Fibers, filaments (including tinsel wire and lame), yarns, or cordage, any of the foregoing introduced as needlework or otherwise, including—

(A) Embroidery, and pile or tufting, whether wholly cut, partly cut, or not cut, and

(B) Other types of ornamentation, but not including functional stitching or one row of straight hemstitching adjoining a hem;

(ii) Burnt-out lace;

(iii) Lace, netting, braid, fringe, edging, tucking, or trimming, or textile fabric;

* * * * * * *

(b) Ornamentation of the types or methods covered hereby consists of ornamenting work done to pre-existing textile fabric, whether the ornamentation was applied to such fabric—

(i) When it was in the place,

(ii) After it had been made or cut to a size for particular furnishings, wearing apparel, or other article, or

(iii) After it had actually been incorporated into another article, and if such textile fabric remains visible, at least in significant part, after ornamentation: Provided, That lace, netting, braid, fringe, edging, tucking, trimming or ornament shall not be required to have had a separate existence from the fabric or other article on which it appears in order to constitute ornamentation for the purposes of this headnote; * * *

* * * * * * *

The petitioner objects to Customs practice of classifying the imported blankets as "not ornamented." It claims that the fabric border and printed designs, which serve no utilitarian function, cause the blankets to fall within the headnote definition of "ornamented." Therefore, according to petitioner, the blankets should properly be classified under item 363.25, TSUS, and not item 363.85, TSUS.

COMMENTS

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments on the petition from interested parties.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations

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(19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: August 31, 1982.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

[Published in the Federal Register, October 6, 1982 (47 FR 44184)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of $0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost ($0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: October 4, 1982.

MARVIN AMERNICK
(For Director,
Regulations Control and Disclosure Law Division).

Date	File No.	Issue
09-14-82	105751	Vessels: The coastwise laws, specifically 46 U.S.C. 316(a) and 46 U.S.C. 883, do not prohibit the use of a foreign-built Archimedean screw tractor to deploy oil booms around fuel barges moored at artificial islands during the ice season in Alaska.
09-13-82	105805	Vessels: Transportation of a drilling rig aboard a foreign-flag barge constitutes a violation of 46 U.S.C. 883, however, if the drilling rig is returned to the point of lading before being unladen, no violation occurs.
09-14-82	105806	Vessels: Applicability of the third proviso to 46 U.S.C. 883 when no Interstate Commerce Commission rate tariff is in effect for a through route involving rail-vessel service between a point in the continental United States and a point in Alaska via a Canadian port.
09-16-82	105817	Vessels: Pursuant to 46 U.S.C. 289b, a Canadian-flag cruise vessel may carry passengers between the Alaskan ports of Skagway, Haines, Ketchikan, Wrangell and Juneau.

19 CFR Part 111

(T.D. 82-181)

CUSTOMHOUSE BROKER LICENSES; CORRECTION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an erroneous reference to a section of the Customs Regulations in a final rule relating to customhouse broker licenses which appeared at page 42727 in the Federal Register of Wednesday, September 29, 1982 (47 FR 42726).

FOR FURTHER INFORMATION CONTACT: James F. Bartley, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service (202-566-5765). The following correction is made to the document:

On page 42727, right-hand column, the last sentence of revised section 111.19(a), Customs Regulations, is corrected to read "* * * Upon receipt of the application, the district director of the district for which a license is desired shall follow the procedure set forth in section 111.12(b); * * *."

Dated: October 1, 1982.

MARVIN M. AMERNICK,
Acting Director,
Regulations Control and Disclosure Law Division.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 82-73)

NATIONAL LATEX PRODUCTS COMPANY, PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Court No. 81-7-00898

Before BERNARD NEWMAN, Judge.

MEMORANDUM AND ORDER

[Post-judgment motions filed by American Imports, Inc. to intervene, etc. denied; motion by Grupo Cydsa, S.A. for leave to file *amicus curiae* brief denied.]

(Dated September 13, 1982)

Sharretts, Paley, Carter & Blauvelt, P.C. (Gail T. Cumins, Peter O. Suchman and *Ned H. Marshak,* Esqs., of counsel) for the plaintiff.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director, Commercial Litigation Branch, *Velta A. Melnbrencis* and *A. David Lafer,* Esqs.); *Ryan Trainer,* Staff Attorney, Office of Assistant General Counsel for Import Administration, United States Department of Commerce, for the defendant.

Blatchford, Epstein & Brady, Esqs. (*Joseph H. Blatchford, Esq.,* of counsel) and Seifman, Semo & Slevin, P.C. (*Joseph Semo* and *Fredrick M. Marx,* Esqs., of counsel) for the proposed intervenor, American Imports, Inc.

Plaia & Schaumberg, Chartered (*Leslie Alan Glick, Esq.,* of counsel) for the proposed *amicus curiae* Grupo Cydsa, S.A.

BERNARD NEWMAN, *Judge:* The within action was dismissed by order of the court on June 16, 1982 as moot pursuant to a stipulation of the parties. *National Latex Products Company* v. *United States,* 3 CIT—, Slip Op. 82-46 (1982). Pending before the Court is a postjudgment application by American Imports, Inc. ("American Imports") to intervene, and for other relief in the event the application is granted. Additionally, Grupo Cydsa, S.A. ("Grupo") has moved to file an *amicus curiae* brief on behalf of American Imports. Both National Latex Products Company ("National Latex") and the government have opposed the motions before the Court. For the reasons explained *infra,* the motions by American Imports and Grupo are denied.

BACKGROUND

This action was commenced on July 16, 1981 by summons and complaint contesting the dismissal on June 17, 1981 by the Department of Commerce ("Commerce") of a countervailing duty petition filed by National Latex in conformance with section 303 of the Tariff Act of 1930, as amended (19 U.S.C. § 1303) (46 FR 31698). It appears that Commerce refused to initiate a countervailing duty investigation into alleged subsidies on Mexican-made toy balloons and playballs in the absence of an allegation by the petitioner (National Latex) of injury to the domestic industry. Plaintiff's claim was predicated on the contention that because Mexico is not a party to the General Agreement on Tariffs and Trade, and since Mexico and the United States have not entered into an agreement requiring that an injury determination be made for the United States to impose countervailing duties on duty-free Mexican imports, no allegation of injury was required in plaintiff's petition. The government's original position in this matter, and the reason why it initially refused to accept plaintiff's petition, was that an August 28, 1978, "notice of initiation of investigation" involving other Mexican duty-free products (43 FR 38482) created an interna-

tional obligation of the United States requiring an injury determination as a prerequisite to the imposition of countervailing duties on duty-free Mexican products.

Following two rulings concerning the issue of executive privilege repecting intragovernmental policy advice and recommendations,[1] plaintiff moved for summary judgment and American Imports requested permission to file an *amicus curiae* brief on behalf of the government. Thereafter, the Court was advised that the parties had entered into discussions concerning a stipulation, and consequently decision was reserved on the *amicus curiae* application. Subsequently in a reversal of its original position, the government on May 13, 1982 stipulated with plaintiff that the latter could file a new petition, which Commerce would consider, without regard to the issue of injury to the dometic industry. The new petition was filed with Commerce on May 18, 1982 and by a decision dated May 26, 1982, (published in the Federal Register on June 1, 1982 (47 FR 23798)) Commerce initiated a countervailing duty investigation into alleged subsidies on toy balloons and playballs from Mexico. Since the case had thus become moot, the parties filed a stipulation of dismissal with the Court on June 7, 1982.

In light of the stipulation of the parties and the mootness of the action, the motion of American Imports to file an *amicus curiae* brief was denied on June 16, 1982 and the Clerk was directed to enter an order of dismissal pursuant to Rule 41(a)(1). See *National Latex, supra.* Accordingly, this action was dismissed.

Presently before the Court are the following motions filed by American Imports on July 16, 1982: a motion to intervene as a defendant; a motion to alter or amend the order of June 16, 1982 dismissing this action, or in the alternative, for relief from that order; and a motion to stay the countervailing duty investigation initiated as a result of the stipulation entered into by National Latex and the Government. A motion to file an *amicus curiae* brief on behalf of American Imports has also been filed by Grupo, an exporter of polypropylene film from Mexico.

OPINION

I

Since Commerce has initiated the countervailing duty investigation for which plaintiff originally petitioned, plaintiff's cause of action for the dismissal of the original petition became moot and has ceased to exist. It is well settled that intervention contemplates the existence of a viable cause of action inasmuch as intervention is ancillary to the main cause of action. *Black* v. *Central Motor Lines Inc.*, 500 F.2d 407, 408 (4th Cir. 1974). In view of the fact that the suit brought by National Latex has ceased to exist by virtue of the stipulation of the parties and dismissal by the Court on June

[1] 2 CIT —, Slip Op. 81-106 (November 18, 1981); 3 CIT —, Slip Op. 82-10 (January 27, 1982).

16, 1982, there no longer remains any pending action between the parties in which there can be intervention. *Cf. Hofheimer* v. *McIntee,* 179 F. 2d 789, 792 (7th Cir. 1950), *cert. denied, Johnston* v. *McIntee,* 40 U.S. 817 (1950) ("whenever a suit ceases to exist by virtue of dismissal by the court, there remains no longer any action in which there can be intervention").

II

Moreover, were this dismissed action still pending, American Imports would have no right to intervene in the litigation because 28 U.S.C. § 2631(j)(1)(B) provides that "in a civil action under section 516A of the Tariff Act of 1930 only an interested party *who was a party to the proceeding in connection with which the matter arose may intervene*" (emphasis added). In the instant case, "the proceeding in connection with which the matter arose" for purposes of section 2631(j)(1)(B), ended with the dismissal of the petition by Commerce. Concededly, American Imports was not a party to the administrative proceeding. See 19 CFR § 355.7(i)(4).

By contrast, the presently pending administrative proceeding in which Commerce has determined to initiate a countervailing duty investigation of toy balloons and playballs from Mexico without regard to the question of injury to the domestic industry is a new proceeding that commenced when National Latex submitted the petition on May 18, 1982. In a word, this new proceeding is currently pending. American Imports, by becoming a party to the currently pending proceeding, cannot thereby bootstrap itself into the first proceeding, to which it was not a party, and which terminated on the dismissal of the original petition. Hence, American Imports' argument that it should now be permitted to intervene because an investigation was initiated on June 1, 1982 is without merit.

III

Further, American Imports is attempting, in effect, to use intervention as a vehicle for immediately contesting Commerce's determination to initiate a countervailing duty investigation. However, determinations by Commerce to initiate and investigation are not subject to immediate judicial review under 19 U.S.C. § 1516a.

It is clear that the dismissal of the action on June 16, 1982 will not impair or impede American Imports' ability to protect its interests, since if the current investigation results in a final affirmative determination, American Imports, if a party to the current administrative proceedings, may then challenge (pursuant to 19 U.S.C. § 1516a(a)(2)(B)(i)) Commerce's determination not to require an injury investigation. Accordingly, American Imports' reliance upon Rule 24(a)(2) is misplaced.[2]

[2]Rule 24(a)(2) of the rules of this Court provides: "(a) *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claimed and interest relating to the

Continued

Significantly, National Latex would clearly be prejudiced by a further unwarranted delay in the initiation of a countervailing duty investigation. Plaintiff's original countervailing duty petition was filed on May 14, 1981 and under section 702(c) of the Tariff Act of 1930, as amended, 19 U.S.C. 1671a(c), Commerce should have initiated its investigation by June 3, 1981. See Judge Watson's recent opinion in *Republic Steel Corporation* v. *United States,* 4 CIT —, Slip Op. 82-58 (1982), appeal pending. As noted, *supra,* the investigation was not commenced until nearly a year after the filing of the petition on June 1, 1982.

IV

Finally, American Imports seeks to stay the current investigation under Rule 62(b) on the ground that the stipulation of the parties was entered into without its consent. The short answer to such request is that since American Imports was not a party to this litigation (indeed, not even and *amicus curiae*), its consent to the stipulation of dismissal was not required.

CONCLUSION

In view of my conclusion that American Imports should not be permitted to intervene, American Imports' other motions directed to the merits are denied, without reaching the merits of the arguments presented. It also follows that the motion by Grupo to file an *amicus curiae* brief on behalf of American Imports must be denied without reaching the merits of the arguments presented.

For the foregoing reasons, it is hereby ORDERED:

1. The application of American Imports to intervene is denied.

2. The motion of American Imports to alter or amend the order of June 16, 1982, or in the alternative for relief from that order, is denied.

3. The application of American Imports to stay the countervailing duty investigation initiated by Commerce on June 1, 1982 (47 FR 23798) is denied.

4. The motion of Grupo for permission to file and *amicus curiae* brief on behalf of American Imports is denied.

(Slip Op. 82-74)

SHADES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 76-11-02546

Before FORD, *Judge.*

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property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties".

Ramin Matchsticks

Importations of certain ramin matchsticks or rounds were classified as articles of wood under item 207.00, Tariff Schedules of the United States, and assessed with duty at 8 percent ad valorem, *held* properly entitled to entry free of duty as worked lumber under the provisions of item 202.46, TSUS.

The raw material from which the matchsticks are made consists of 2″ x 2″, 2″ x 4″ and 2″ x 6″ ramin lumber in 12′ and 13′ lengths which are cut by gang rip saws and made into rounds or matchsticks on a molding machine. The raw material in its original sawed condition has at least 2 parallel flat longitudinal sawed surfaces as required by the definition contained in Subpart B, Schedule 2, headnote 2(a).

The uncontradicted testimonies of the witnesses establish the imported merchandise is made on a molder and is patterned, i.e., shaped at the edges. By virtue of the definition contained in Schedule 2, Subpart B, headnote 2(a)(iii) the imported merchandise is worked lumber.

Since ramin matchsticks require substantial work after importation and are not dedicated to a specific use, they are not removed from the category of lumber.

[Judgment for plaintiff.]

(Decided September 14, 1982)

Glad, Tuttle & White (*Stephens S. Spraitzar* and *Gary Cooper* at the trial and on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Robert H. White*, at the trial and on the brief), for the defendant.

FORD, *Judge:* This action presents to the court for determination the proper classification of certain ramin matchsticks or rounds. The merchandise was classified by customs as articles of wood, not specially provided for, under item 207.00, Tariff Schedules of the United States, as modified by Presidential Proclamation 3822, T.D. 68/9, and assessed with duty at 8% ad valorem. Plaintiff contends said material is worked or dressed lumber within the definition contained in Schedule 2, Subpart B, Headnote 2(a) (ii) or (iii) and, accordingly, is properly subject to classification under item 202.46, TSUS, as modified, supra. All other claims contained in the complaint, having been abandoned, are dismissed.

The statutory provisions and headnotes pertaining to this merchandise read as follows:

207.00	Articles not specially provided for, of wood.	8% ad val.
	Lumber, rough, dressed, or worked (including softwood flooring classifiable as lumber, but not including siding, molding, and hardwood flooring):.	
	* * * * * * * *	
	Hardwood:	* * * * * * *
	Other:	* * * * * * *
202.46	Dressed or worked	Free

SUBPART B—LUMBER, FLOORING AND MOLDINGS

SUBPART B HEADNOTES

* * * * * * *

2. For the purposes of this part, the following terms have the meaning hereby assigned to them:

(a) *Lumber:* A product of a sawmill or sawmill and planing mill derived from a log by lengthwise sawing which, in its original sawed condition, has at least 2 approximately parallel flat longitudinal sawed surfaces, and which may be rough, dressed, or worked, as set forth below:

(i) Rough lumber is lumber just as it comes from the saw, whether in the original sawed size or edged, resawn, crosscut, or trimmed to smaller sizes;

(ii) Dressed lumber is lumber which has been dressed or surfaced by planing on at least one edge or face; and

(iii) Worked lumber is lumber which has been matched (provided with a tongued-and-grooved joint at the edges or ends), shiplapped (provided with a rabbeted or lapped joint at the edges), or patterned (shaped at the edges or on the faces to a patterned or molded form) on a matching machine, sticker, or molder.

Edge-glued or end-glued wood over 6 feet in length and not over 15 inches in width shall be classified as lumber if such wood as a solid piece without glue joints would be deemed to be lumber as defined above.

* * * * * * *

(c) Hardwood: Wood from trees of non-coniferous species.

The record consists of the testimony of three witnesses called on behalf of plaintiff as well as the receipt in evidence of ten exhibits. Defendant presented the testimony of one witness. The official papers were received in evidence without being marked.

The first witness called on behalf of plaintiff was Leland Paschick, who was formerly president and plant manager of the importing company. His present business, "Shades II", has no rela-

tionship to the importer, but does deal in the same type of merchandise. While employed by the importer, the witness visited the factories in Japan and Taiwan where the imported merchandise was made. The manufacturing steps in both countries remained substantially the same between 1950 and 1970.

According to the witness, the material from which the imported articles are made is ramin wood procured from Indonesia and Malaysia. The raw material used by the foreign producer is rough cut lumber in dimensions of 2″ x 2″, 2″ x 4″, 2″ x 6″, all being 12 or 13 feet long. This lumber is then processed by passing it through a gang rip saw which produces an article 2″ in width and the thickness of about 3 millimeters. In addition, according to the witness, the merchandise is passed through a molding machine resulting in the production of a 3.7 millimeter round reed. The reed is then placed in a shaker which smooths and cleans rough fibers from it. They are then cut into the specified lengths which had been ordered and packaged. After packaging nothing further is done to them prior to importation into the United States. The photographs received in evidence as Plaintiff's Exhibit 3 depict the process of manufacture.

After importation the reads are painted, stained, or left in a natural form and are run through another shaking machine. The painting and staining involves immersing the reeds in a bath of paint or stain and allowing it to drain off. The next step utilizes a heater to dry the rounds which are then woven with small wood slats and warp yarns. The woven roll goods are sold to converters who fabricate them into window shades or custom-ordered draperies, folding doors, room dividers, wall coverings, and other products. These rolls are generally sold as "woven woods" in width of 8′, 10′ and 12′ and in lengths of 50′ to 60′.

The jobbers in manufacturing the shades or drapes cut a portion of the roll, which is then mounted on a wooden head rail or on a spring roll.

According to Mr. Paschick the imported merchandise was worked lumber since it was patterned by the molding machine.

Plaintiff called Mr. James R. Brice, President of Brice Tool and Stamping Company, whose business is the building and designing of tools and stampings. The witness designed molding machines and the company has manufactured milling machines. While the witness admitted he was not an expert in the lumber industry, he was well qualified as an engineer. He identified the machines depicted in Exhibit 3F, G and H as molding machines similar to those manufactured by another California company. It is the professional opinion of Mr. Brice that the imported ramin lumber is patterned on a molder. The molder shapes the lumber at the edges.

Plaintiff's third witness, Patrick Bennett, is president of Trans-Pacific Wood Company, engaged in the importation of forest prod-

ucts. He has been in the wood products industry for approximately 20 years. The witness agreed with the definition of lumber set forth in the headnotes, as well as the definition of worked lumber. It was his opinion that the imported merchandise falls within the definition of worked lumber.

Defendant called Wilbur L. Johnston, Director of Architectural Services at the Woodwork Institute of California, which is a nonprofit corporation for promotion of better quality millwork and architectural wood products in the State of California. The witness agreed that the merchandise at bar, as well as the slats, were worked lumber since they were made on a molder.

In the field of customs jurisprudence it is axiomatic that plaintiff has a dual burden of proof. 28 U.S.C. 2639(a)(1). Therefore, plaintiff must establish the classification under item 207.00, TSUS, to be erroneous and that classification under item 202.46, TSUS, is proper. In order to accomplish the latter, plaintiff must establish the imported merchandise to be hardwood lumber as defined in headnote 2(c) subpart B, part 1, schedule 2, TSUS. Plaintiff must also establish the merchandise to be either worked lumber or dressed lumber as defined by said headnote 2(a) (see subheadings (ii) and (iii)).

Plaintiff, by its request for admission, received in evidence as plaintiff's exhibit 1, has established the merchandise to be hardwood. Paragraph 9 of said exhibit admits the imported merchandise is wood obtained from a tree of a non-coniferous species which conforms to the definition of hardwood as set forth in the headnote, supra.

Defendant contends the imported merchandise does not conform to the definition of lumber contained in the headnote, supra. In order to conform, defendant contends the lumber cannot be round since the definition states "in its original sawed condition, has at least 2 approximately parallel flat longitudinal surfaces * * *." This theory was urged in *A. N. Deringer, Inc.* v. *United States,* 61 Cust. Ct. 66, C.D. 3530 (1981) and discarded as indicated in the following observation:

> Nor is it any bar to the classification of the imports as lumber that their longitudinal surfaces are not parallel. The statutory requirement of parallelism imposed by headnote 2(a) applies only to lumber "in its *original* sawed condition * * *" [emphasis supplied], and the record clearly establishes that "in their original sawed condition" the imports possessed two parallel flat surfaces. Also significant is the "Brussels Nomenclature" which—as the Tariff Commission pointed out—had an important influence on the arrangement of the proposed revised tariff schedules. *Tariff Classification Study, Submitting Report* (1960), p. 8. To the extent relevant, the Brussels Nomenclature states:

44.05—Wood Sawn Lengthwise, Sliced or Peeled, but not Further Prepared, of a Thickness Exceeding Five Millimeters

> With a few exceptions, this heading covers all wood and timber, of any length but of a thickness exceeding 5 mm., sawn along the general direction of the grain or cut by slicing or peeling, but not further worked * * *.
>
> * * * * * * *

It is to be noted that sawn timber falling within this heading *need not necessarily be of rectangular section* nor of uniform section along the length. 5 [Emphasis supplied.]

The "sawn timber" referred to is the counterpart of "lumber" provided for in the Tariff Schedules of the United States, and (as the above quotation reflects) the mere fact that its cross section (as here) is triangular rather than rectangular (and its longitudinal surfaces thus not parallel) does not preclude its classification as lumber.

5 Vol. II, *Explanatory Notes to the Brussels Nomenclature* 1955, Ch. 44, pp. 413–14 (1964 ed.). [P. 74.]

The testimony adduced herein establishes the imported merchandise was derived from 2″ x 2″, 2″ x 4″ or 2″ x 6″ lumber in lengths of 12′ and 13′. By use of gang rip saws or band saws, they were cut into thinner boards. In the original sawed condition the 2″ x 2″, 2″ x 4″ or 2″ x 6″ had two flat parallel sides and were the product of a sawmill. Plaintiff has, therefore, established the merchandise to be lumber within the purview of headnote 2(a), supra.

The next aspect for consideration is plaintiff's principal claim that said merchandise is worked lumber. The definition of worked lumber in headnote 2(a) supra is as follows:

> Worked lumber is lumber which has been matched (provided with a tongued-and-grooved joint at the edges or ends), shiplapped (provided with a rabbeted or lapped joint at the edges), or patterned (shaped at the edges or on the faces to a patterned form) on a matching machine, sticker, or molder. (Subpart B, Headnote 2(a)(iii)).

The uncontradicted testimonies of Mr. Paschick, Mr. Brice and Mr. Bennett establish the imported ramin matchsticks are made on a molder and are patterned, i.e., shaped at the edges. Mr. Johnson called by defendant testified the imported merchandise was worked lumber within the definition contained in headnote 2(a) supra based upon the testimony given by prior witnesses relating to its manufacture. Plaintiff has, therefore, established the imported merchandise to properly fall within the provision for hardwood worked lumber which is ordinarily sufficient to sustain its claim. However, under established case law an article may not be classified as lumber if it has been so processed as to become the article itself. *C. J. Tower & Sons* v. *United States*, 40 CCPA 30, C.A.D. 493 (1952); *United States* v. *C. S. Emery Co.*, 18 CCPA 208, T. D. 44399 (1930).

In *Tower* the importation consisted of wood cut according to specification to make up crate frames. The court therein made the following observation:

> * * * that the wood was cut in accordance with the specifications to make up crate frames; that the wood was cut diagonally, halved or beveled, or what is known in the trade as shiplap; that no piece of the merchandise was straight cut on both ends; that the material as imported would go to make up the framework of the shipping crate as called for by the specifications; and that the pieces of lumber were shipped in bundles according to size, each bundle being numbered to correspond with the numbers set out in the blue print. [P. 32.]

The court concluded as follows:

> Those arguments have been carefully considered by us but we are of the opinion, as was held below, that by reason of the cutting and shaping processes to which the material was subjected prior to its importation it was removed from the category of lumber and became a manufacture of wood dedicated to a definite and specific use and possessing a character and name completely different from the material out of which it was made. [P. 33.]

This case is distinguishable since the imported ramin reeds undergo substantial operations after importation. They are painted, stained or left in their natural state and are run through another shaking and drying process. The ramin reeds are combined with small wood slats and woven with yarns into rolls. These rolls are sold to converting jobbers who make them into various types of window shades, drapery or wall coverings, folding doors, room dividers, and other products. Therefore, the ramin reeds in their condition as imported are not dedicated to a definite and specific use.

The same reasoning is equally applicable in *Emery,* supra, which involved doorsills and stair rails.

The court in *Deringer* made the following comprehensive review of the issue of lumber and articles of wood.

> We note at the outset that the tariff schedules here in question do not make a distinction between a manufacture of wood as such and lumber. Thus item 207.00—the tariff provision invoked by the government—provides not for manufactures of wood but rather for "articles" of wood. By contrast, earlier tariff acts did contain a specific provision for "manufactures of wood," as well as a provision for lumber not further advanced than sawed and planed lumber. But even under these earlier statutes, items such as those involved here were held properly dutiable as lumber rather than as manufactures of wood notwithstanding that they were known by a separate name other than "lumber" and notwithstanding that as a result of sawing and planing their character was so changed that they were useful for only a single purpose (as opposed to rough lumber which is useful for a multitude of purposes). Included among

such items—which the courts classified as lumber rather than as manufactures of wood—were: Pieces of maple and spruce about 15 inches long by 4½ inches wide, wedge-shaped, partially sawed through lengthwise, partially planed, and used to make cello, violin and viola tops, bodies and sides, *United States* v. *Gallagher & Ascher,* 12 Ct. Cust. Appls. 472, T.D. 40670 (1925); moldings, *Best-Moulding Corporation* v. *United States,* 51 CCPA 7, C.A.D. 829 (1963), and *Bailey-Mora Company, Inc., et al.* v. *United States,* 57 Cust. Ct. 99, 109–10, C.D. 2737 (1966); boards designed for use as inside ceiling, and boards chiefly used as siding for frame buildings, *United States* v. *Myers & Co. et al.,* 5 Ct. Cust. Appls. 541, T.D. 35179 (1915); stock solely used in the manufacture of sides of drawers for furniture, *B. A. McKenzie & Co., Inc.* v. *United States,* 39 Cust. Ct. 52, 56–57, C.D. 1903 (1957), and *Border Brokerage Co. et al.* v. *United States,* 52 Cust. Ct. 204, C.D. 2641 (1964); slats for blinds and screens, *Acme Venetian Blind & Window Shade Corp.* v. *United States,* 56 Cust. Ct. 563, C.D. 2704 (1966); boards intended to be used in the construction of silos, *C. S. Emery & Company* v. United States, 28 Cust. Ct. 303, C.D. 1427 (1952), tongued and grooved knotty pine paneling, *C. S. Emery & Company* v. *United States,* 41 Cust. Ct. 7, C.D. 2013 (1958); cedar pencil blocks, sawed to the proper dimensions for the purpose of making pencils and nothing else, *United States* v. *Young,* 15 Ct. Cust. Appls. 111, T.D. 42188 (1927). As this court pointed out in *Bailey-Mora Company* v. *United States, supra,* 57 Cust. Ct. at 109, the cases (under the earlier tariff acts) "establish[ed] the general rule * * * that a duty provision for lumber not further advanced than sawed and planed includes all forms of such lumber."

There is a caveat to what has been said however: If the lumber had been processed to the extent that *it itself* became the article for which the material was intended, then it was dutiable as a manufacture of wood and not as lumber.

In view of the foregoing and based upon the record, it is apparent the imported lumber has not been so processed as to remove it from the category of lumber and relegate it to the provision for articles of wood dedicated to a specific use.

Upon due consideration of the record and upon review of the authorities cited, the court is of the opinion that plaintiff has sustained its burden of proof and is entitled to judgment.

Judgment will be entered accordingly.

(Slip Op. 82-75)

ASAHI CHEMICAL INDUSTRY COMPANY, LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AMERICAN YARN SPINNERS ASSOCIATION, PARTY-IN-INTEREST

Court No. 81-7-00922

(Dated: September 14, 1982)

Before MALETZ, *Judge.*

On Cross-Motions for Judgment on the Administrative Record

Barnes, Richardson & Colburn (*Edwin F. Rains, James S. O'Kelly* and *Sandra Liss,* of counsel) for the plaintiff.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen,* Director, Commercial Litigation Branch, *Velta A. Melnbrencis* on the brief), for the defendant.

Leva, Hawes, Symington, Martin & Oppenheimer (*Joseph H. Price* and *Simeon M. Kriesberg* on the brief) for Party-in-Interest and American Yarn Spinners Association.

MALETZ, *Judge:* This action involves the construction of section 751(a) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, 19 U.S.C. 1675(a) (Supp. IV 1980). Section 751(a) provides, among other things, for periodic review by the Department of Commerce of antidumping duty orders at least once every 12 months. Plaintiff Asahi Chemical Industry Company, Ltd. (Asahi) contests a final determination by the International Trade Administration of the Department of Commerce (ITA) under this section. The ITA found that a dumping margin of 29.05 percent existed as to Asahi for the review period and, accordingly, ordered that cash deposits of estimated antidumping duties be imposed on future shipments of Asahi's merchandise to the United States. The ITA reached this determination notwithstanding that no Asahi merchandise entered the United States during the review period.

Asahi has moved and defendant United States (the Government) and Party-in-Interest American Yarn Spinners Association (AYSA) have cross-moved for judgment on the administrative record, pursuant to rule 56.1 of the rules of this court. For the reasons stated, Asahi's motion is denied, and the Government's and AYSA's cross-motions are granted.

Facts

The material facts are not in dispute. After an investigation of spun acrylic yarn from Japan in 1979, the Department of the Treasury found less than fair value (LTFV) margins ranging from 6.13 to 58.21 percent on sales of the merchandise from Asahi. Margins were found on 100 percent of the Asahi sales examined; the weighted average margin was 29.05 percent. 44 Fed. Reg. 61492, 61493 (1979). The International Trade Commission determined that such unfairly priced yarn from Japan was causing injury to the do-

mestic industry. 45 Fed. Reg. 19682 (1980). Accordingly, the Department of Commerce, to which the responsibilities previously held by the Treasury Department had been transferred, ordered the imposition of antidumping duties on Asahi's shipments of spun acrylic yarn to the United States. 45 Fed. Reg. 24127 (1980).

Pursuant to its statutory responsibility under section 751(a) of the Tariff Act of 1930, as amended, the ITA initiated an administrative review of the outstanding antidumping duty order, which review covered sales during the 8½ month period from July 13, 1979 to March 31, 1980. The ITA found that Asahi had not shipped spun acrylic yarn to the United States during this period, but nevertheless required a deposit of estimated antidumping duties equal to the LTFV margin on the most recent Asahi sales to the United States, i.e., 29.05 percent. 46 Fed. Reg. 32928, 40912 (1981).

The Parties' Constructions of Section 751(a)

Section 751(a) provides in part as follows:

> Sec. 751. Administrative Review of Determinations
>
> (a) Periodic Review of Amount of Duty.—
>
> (1) In general.—At least once during each 12-month period beginning on the anniversary of the date of publication of . . . an antidumping duty order under this title . . . the administering authority, after publication of notice of such review in the Federal Register, shall—
>
> * * * * * * *
>
> (B) Review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty * * *
>
> * * * * * * *
>
> and shall publish the results of such review, together with notice of any * * * estimated duty to be deposited, * * * in the Federal Register.
>
> (2) Determination of antidumping duties.—For the purpose of paragraph (1)(B), the administering authority shall determine—
>
> (A) The foreign market value and United States price of each entry of merchandise subject to the antidumping duty order and included within that determination, and
>
> (B) The amount, if any, by which the foreign market value of each such entry exceeds the United States price of the entry.
>
> The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

Asahi contends that section 751(a) is clear and unambiguous. Read literally, Asahi argues that that section provides that periodic review determinations are to be based exclusively on facts and circumstances as they exist during the review period. It insists that information falling outside of the review period is not to be considered by the ITA. According to Asahi, the ITA is thus restricted to the review period for the purpose of data gathering. Therefore, Asahi concludes, if no shipments of merchandise to the United States have been made during the review period, then no LTFV margin exists and no deposit of estimated duties on the next entry of Asahi's merchandise into the United States may be required.

The party-in-interest, AYSA, also employs a literal interpretative approach but reaches an opposite conclusion, namely that section 751(a) requires the deposit of estimated duties even though there have been no entries of merchandise during the review period. Read literally, AYSA continues, section 751(a)(2) contemplates that where no entries of merchandise have occurred during that period, an LTFV margin must nevertheless be calculated. In such a situation, AYSA concludes, the ITA must determine the LTFV margin based on the most recent information available to it.

Unlike Asahi and AYSA, the Government maintains that section 751(a) is silent on this question. However, the Government argues, in light of the Trade Agreements Act of 1979 as a whole and its legislative history, Congress intended that under section 751(a) all entries of merchandise under an antidumping duty order—with specific exceptions not applicable here—be subject to estimated duties during the pendency of that order. Thus, according to the Government, Congress did not intend to excuse the deposit of estimated duties on future entries when no shipments have entered the United States during a particular review period.

Opinion

At the outset, I think it clear—contrary to the positions of plaintiff and AYSA—that section 751(a) does not address the question of how LTFV margins are to be determined when no shipments have been made during a review period. At the same time, faced with this situation, the ITA—the agency charged with administering periodic reviews under section 751(a)—has consistently interpreted the section as requiring resort to the most recent price and value information available to it to determine LTFV margins.[1]

It is of course basic that in order to sustain an agency's interpretation, a court need not find its interpretation to be the only reasonable one or even that it is the result which the court itself would have reached had the question arisen in the first instance in

[1] The Government has cited over 40 administrative cases where the ITA has employed this interpretation. See, e.g., Clear Sheet Glass from Taiwan, 46 Fed. Reg. 23,278 (1981); Pig Iron from Finland, 47 Fed. Reg. 5,279 (1982); and Polychloraphrene Rubber from Japan, 47 Fed. Reg. 2,389 (1982). Asahi has not cited any agency interpretation of section 751(a) at variance with these cases.

judicial proceedings (1978). For the reasons that follow, the ITA interpretation is "sufficiently reasonable" to be accepted by the court. *Id.* at 450; *Train* v. *Colorado Pub. Interest Research Group,* 426 U.S. 1, 10 (1976).[2]

While it is true that "[t]he starting point in every case involving construction of a statute is the language itself," *Blue Chip Stamps* v. *Manor Drug Stores,* 421 U.S. 723, 756 (1975), nevertheless, as noted by the Supreme Court in *Lynch* v. *Overholser,* 369 U.S. 705 (1962):

> The decisions of this Court have repeatedly warned against the dangers of an approach to statutory construction which confines itself to the bare words of a statute, *e.g., Church of the Holy Trinity* v. *United States,* 143 U.S. 457, 459–462; *Markham* v. *Cabell,* 326 U.S. 404, 409 * * *.

Id. at 710. See also *Ford Motor Credit Co.* v. *Milhollin,* 444 U.S. 555, 565 (1980). Learned Hand observed in this same connection that:

> [I]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

Cabell v. *Markham,* 148 F.2d 737, 739 (2d Cir.), *aff'd,* 326 U.S. 404 (1945).

What seems evident from a careful examination of the legislative history of the Trade Agreements Act of 1979 is that Congress did not expressly address itself to the issue of how dumping margins are to be determined when no shipments of merchandise have been made during a review period.[3] Confronted with that problem and faced with an identical issue of statutory construction, Judge Leventhal, speaking for the District of Columbia Circuit Court of Appeals in *District of Columbia* v. *Orleans,* 406 F.2d 957 (1968), wrote that:

> The court's effort must be to discern dispositive legislative intent by "projecting as well as it could how the legislature would have dealt with the concrete situation if it had but spoken."

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[2] The Government and AYSA urge the court to defer to ITA's interpretation of section 751(a), inasmuch as ITA is the agency charged with the responsibility of administering periodic reviews under section 751(a). Of course, the administrative interpretation of a statute by the agency charged with its administration is entitled to deference. *Zenith Radio Corp.* v. *United States,* 437 U.S. 443, 450 (1978); *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965). Nevertheless, a contemporaneous agency interpretation of a statute is merely an aid to statutory construction; it is not a substitute for independent judicial inquiry, nor is it conclusive on a court. It is the courts which have the final word on matters of statutory interpretation. *Ithaca College* v. *NLRB,* 623 F.2d 224, 228 (2d Cir.), *cert. denied,* 449 U.S. 975 (1980). See *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is").

[3] The legislative history of section 751(a) is particularly uninstructive, tracking nearly verbatim the language of section 751(a) as enacted. See S. Rep. No. 249, 96th Cong., 1st Sess. 80 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 71–72 (1979).

Id. at 958 (quoting *City of Chicago* v. *FPC,* 385 F.2d 629, 635 (D.C. Cir. 1967) (footnote omitted)). In this same connection, Judge Leventhal further observed in *Montana Power Co.* v. *FPC,* 445 F.2d 739 (1970) (*en banc*), *cert. denied,* 400 U.S. 1013 (1971):

> [T]he court must discern the applicable legislative intent by what is necessarily an act of projection—starting from the areas where the legislative intent is readily discernible, and projecting to fair and reasonable corollaries of that intent for the specific issue before us.

Id. at 746 (footnote omitted).

Most recently, in *National Wildlife Federation* v. *Gorsuch,* 530 F. Supp. 1291 (D.D.C. 1982), the court noted that:

> When a particular problem has not been addressed by Congress, the court must extrapolate congressional intent from areas where the expression of intent is clear, applying the more generally expressed intent to the specific issue before it.

Id. at 1304.

Turning then to the legislative history of the Trade Agreements Act of 1979, two points are readily discernible. First, Congress was primarily concerned with the collection of antidumping duties once an antidumping duty order had issued, not with providing exceptions to or avoidance of such collection. Second, Congress intended that in the ascertainment of LTFV margins, actual entries, sales and purchases of merchandise be utilized, not their absence.

Considering the first point, Congress evidenced its intent to make cash deposits of estimated duties on merchandise subject to an antidumping duty order the general rule, subject to two express exceptions. The first exception provides for a waiver of cash deposits for those importers who have taken steps to revise their prices so as to significantly lower the LTFV margin. See section 736(c), 19 U.S.C. § 1673e(c). Thus the report of the House Committee on Ways and Means on that section states that:

> [M]erchandise subject to an antidumping duty order may be entered only upon the deposit of estimated antidumping duties. . . .
>
> * * * * * * *
>
> [T]he bill provides a limited exception [i.e., section 736] to the requirement of a deposit of estimated duties for importers who have taken steps to eliminate or substantially reduce dumping margins between the date of an affirmative preliminary determination by the Authority [the ITA] and the final affirmative determination by the ITC [International Trade Commission].

H.R. Rep. No. 317, 96th Cong., 1st Sess. 69–70 (1979).

In addition, the Senate Finance Committee report on section 736(c) states that:

> Generally, estimated duty deposits equal to the amount of the estimated antidumping duty would be required to be deposited at the same time as estimated normal customs duty deposits must be made with respect to the merchandise under section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505). However, the administering authority could permit the importer to post a bond or other security in lieu of estimated antidumping duty deposits for not more than 90 calendar days after the date on which the antidumping duty order is published under certain conditions. . . .
>
> * * * * * * *
>
> *Reason for the provision.*—Section 736 would establish time limits on the assessment of antidumping duties, require cash deposits of estimated duties upon entry, and prescribe the entries to which antidumping duties may be applied. . . . [T]he committee intends that antidumping duties be collected expeditiously.

S. Rep. No. 249, 96th Cong., 1st Sess. 76 (1979).

The second express exception to the general rule that estimated duties are to be deposited on entries of merchandise subject to an antidumping duty order is the changed circumstances provision of section 751(b), 19 U.S.C. 1675(b). Under that section an antidumping duty order may be modified or revoked upon a showing by the importer of changed circumstances sufficient to warrant a review.

Neither the section 736(c) nor section 751(b) exception is applicable here.

Finally, the Senate Finance Committee commented on the "dismal performance of the Department of the Treasury in assessing special dumping duties." S. Rep. No. 249 at 767. Likewise, the House Ways and Means Committee expressed its dissatisfaction "with the past record of the Secretaries of the Treasury in assessing duties on entries subject to a dumping finding." H.R. Rep. No. 317 at 69.

In short, the discernible legislative intent is that Congress was primarily concerned with the expeditious collection of antidumping duties once an antidumping duty order is in effect, not with exceptions thereto or avoidance thereof. Indeed, when Congress wanted an exception it expressly so provided.

What is more, the consistent congressional focus in the Trade Agreements Act and its legislative history is on actual shipments, sales and purchases of merchandise, not on the absence of such shipments, sales or purchases, when ascertaining LTFV margins. In addition to the foregoing legislative history which refers only to actual entries of merchandise, the statutory definitions of "United States price" and "foreign market value" both contemplate price and value calculations based on actual purchases and sales of merchandise. Thus, section 772, 19 U.S.C. § 1677a, provides in part as follows:

> Sec. 772. United States Price
>
> (a) United States Price.—For purposes of this title, the term "United States price" means the purchase price, or the exporter's sales price of the merchandise, whichever is appropriate.
> (b) Purchase Price.—For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer or the merchandise for exporation to the United States. . . .
> (c) Exporter's Sales Price.—For purposes of this section, the term "exporter's sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e).

Further, section 773, 19 U.S.C. § 1677b, provides in part as follows:

> Sec. 773 Foreign Market Value
>
> (a) Determination; Fictitious Market; Sales Agencies.—For purposes of this title—
> (1) In General.—The foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States—
> (A) At which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, or
> (B) If not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form and inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States, * * *

Additionally, section 773(a)(1), 19 U.S.C. § 1677b(a)(1), prohibits the use of fictitious or pretended sales or markets in the ascertainment of foreign market value:

> In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

These statutory provisions and the legislative history set out above thus evidence Congress' intent that the ITA is to consider only the actual entry, sale and purchase of merchandise when calculating antidumping duty assessments and estimates under section 751(a). Projecting how Congress would have dealt with the concrete situation of determining LTFV margins when no shipments

occur during a review period, it is reasonable to conclude that Congress would have directed the ITA to use the most recent price and value information available based on actual entries, sales and purchases of merchandise—as the ITA has consistently done. The court, therefore, concludes that the ITA interpretation of section 751(a) has a reasonable basis in law.

Asahi's interpretation, on the other hand, taken to its logical extreme, would lead to an absurd conclusion. For its position is that the absence of shipments during a review period means that there is no LTFV margin. This is tantamount to concluding that the foreign market value of Asahi's merchandise is less than or equal to the United States price, or, conversely, that the United States price of its merchandise is greater than or equal to the foreign market value of that merchandise. Not only is such a conclusion patently illogical, it is a fiction which runs contrary to the spirit and intent of the Trade Agreements Act. If a reading of a statute leads to a result which is "contrary to the congressional intent and leads to absurd conclusions," it is to be rejected. *United States* v. *Bryan*, 339 U.S. 323, 338 (1950). "No rule of construction necessitates * * * acceptance of an interpretation resulting in patently absurd consequences." *United States* v. *Brown*, 333 U.S. 18, 27 (1948).

Conclusion

For the foregoing reasons, defendant's cross-motion for judgment on the administrative record is granted; party-in-interest's cross-motion for judgment on the administrative record is granted; and plaintiff's motion for judgment on the administrative record is denied.

(Slip Op. 82–76)

ROQUETTE FRERES AND ROQUETTE, CORPORATION, PLAINTIFFS, *v.* THE UNITED STATES, DEFENDANT, and PFIZER INC., INTERVENOR

Court No. 82–5–00636

Before BOE, *Judge.*

MEMORANDUM AND ORDER

Motion by Pfizer Inc., Intervenor, To Strike Paragraph 8(b) of Plaintiffs' Complaint

[Motion to strike, denied.]

(Dated September 15, 1982)

Wald, Harkrader & Ross (*Joel E. Hoffman, Terence Roche Murphy* and *Helen Kemp Zax*, of counsel) for the plaintiffs.

J. Paul McGrath, Assistant Attorney General (*David M. Cohen*, Director, Commercial Litigation Branch and *A. David Lafer*) for the defendant.

Freeman, Wasserman & Schneider (*Jack Gumpert Wasserman*, of counsel) for the Intervenor.

BOE, *Judge:* Pursuant to rule 12(f) of the rules of this court, Pfizer Inc., Intervenor, has moved to strike paragraph 8(b) of plaintiffs' complaint wherein it is alleged that the refusal by the International Trade Administration (ITA) to grant plaintiffs' requested postponement of the final affirmative determination in the antidumping proceedings precluded full consideration by the ITA of two diplomatic notes submitted by the French government on matters relating to the system of imported levies and export restitution payments.

The present motion of the intervenor seeks to strike paragraph 8(b) of plaintiffs' complaint as "illusory" and immaterial.

The refusal by the ITA to postpone its final affirmative determination was not subject to any interlocutory review. To the extent, therefore, that any decisions made by the ITA during the administrative proceedings may have affected the final affirmative determination, such preliminary decisions are properly included and incorporated in the review of the final affirmative determination. *See* 19 U.S.C. 1516(a)(2)(A); H. Rep. No. 96-1235, 96th Cong., 2d Sess. at 48 (1980); *PPG Industries, Inc.* v. *United States*, 1 CIT —, Slip Op. 81-53, 525 F. Supp. 883 (1981).

The merits of the allegations contained in paragraph 8(b) of plaintiffs' complaint are not properly before the court at this time. To prematurely judge the merits of plaintiffs' claim as asserted by paragraph 8(b) of its complaint, by striking the same, would deprive the plaintiffs of its only opportunity to challenge a preliminary decision made during the antidumping proceeding which may or may not have wrongfully affected the final determination.

Accordingly, the motion of the Intervenor, Pfizer Inc., to strike paragraph 8(b) of plaintiffs' complaint, is hereby denied.

(Slip Op. 82-77)

UNITED STATES OF AMERICA, PLAINTIFF, *v.* DAVID W. SHINEMAN and NAUTILUS YACHT SALES, INC., D.B.A. IMEX TRADING CO., DEFENDANTS

Court No. 82-6-00837

BERNARD NEWMAN, *Judge.*

MEMORANDUM AND ORDER ON DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION

[Motion to dismiss denied.]

(Dated September 17, 1982)

J. Paul McGrath, Assistant Attorney General (*David M. Cohen*, Director, Commercial Litigation Branch and *Sandra P. Spooner, Esq.*); *Allen L. Martin*, Assistant

Regional Counsel, Office of the Regional Counsel, United States Customs Service, for the plaintiff.

Hillman, Brown & Darrow, Esqs. (*Michael P. Darrow, Esq.*, for counsel) of the defendants.

BERNARD NEWMAN, *Judge:* The United States commenced this action on June 11, 1982 seeking to recover civil penalties under 19 U.S.C. § 1592 ("section 592"), charging defendants with violating that statute by the making of materially false statements or omissions in connection with three consumption entries filed with Customs at Baltimore, Maryland in 1976.

Defendants have moved to dismiss, contending that the Court of International Trade lacks subject matter jurisdiction, and relying on *United States* v. *Digital Equipment Corp.*, 3 CIT —, Slip Op. 82-11 (January 29, 1982). In that case, our late esteemed colleague, Judge Scovel Richardson, held that while the Customs Courts Act of 1980 granted the Court of International Trade exclusive jurisdiction over *in personam* penalty actions arising under section 592, as amended by the Customs Procedural Reform and Simplification Act of 1978, Pub. L. No. 45-910, 92 Stat. 888,[1] the Court of International Trade does not have jurisdiction over *in rem* penalty actions arising under former section 592. Judge Richardson, then, determined that the action before the Court in *Digital Equipment* was under the *in rem* provisions of former section 592, and accordingly dismissed the action for lack of jurisdiction.[2]

Responding to defendants' motion to dismiss, the Government cites two recent rulings by Judge Maletz subsequent to the *Digital Equipment* decision by Judge Richardson: *United States* v. *Accurate Mould Company, Ltd. and John V. Carr & Sons, Inc.*, 4 CIT —, Slip Op. 82-65 (August 11, 1982); and *United States* v. *Digital Equipment Corp.*, 4 CIT —, Slip Op. 82-66 (August 12, 1982).

In *Accurate Mould,* Judge Maletz held that the decision in *Digital Equipment* (Slip Op. 82-11, *supra*) was erroneous, since 28 U.S.C. § 1582(1) granted the Court of International Trade exclusive jurisdiction over *any* action brought under section 592, irrespective of whether the action was brought under the present provision of section 592 or under the provision which was in effect prior to the amendments made by the Customs Procedural Reform and Simplification Act of 1978. Further, Judge Maletz found that under section 1582 the Court's jurisdiction is not limited by the date of importation.

In *Digital Equipment* (Slip Op. 82-66, *supra*), Judge Maletz granted a motion for rehearing and vacated the order of January 29, 1981 (Slip Op. 82-11), citing *Accurate Mould.* Plainly, then, *Digital*

[1] The 1987 act, *inter alia*, changed the penalty for violation of section 592 "from an in rem penalty, forfeiture of the merchandise, to an in personam penalty, a monetary liability of the importer." S. Rep. No. 95-778, May 2, 1978 (to accompany H.R. 8149), p. 19, reprinted in 3 U.S. Cong. & Adm. News '78, p. 2230.

[2] A motion for rehearing was filed in *Digital Equipment* on February 26, 1982, which motion was acted upon by Judge Maletz after the untimely demise of Judge Richardson. See discussion of Slip Op. 82-66 (August 12, 1982), *infra.*

Equipment cannot provide a basis for dismissal of the present action for lack of jurisdiction.

Following the authority of *Accurate Mould,* I conclude that the Court of International Trade has subject matter jurisdiction over the present action, whether the action is characterized as *"in rem"* or *"in personam".*

Accordingly, defendants' motion to dismiss for lack of jurisdiction is denied.[3]

(Slip Op. 82-78)

JULIAN R. WOODRUM, DENNIS DORSEY, and SHERMAN JOHNSON, PLAINTIFFS, *v.* RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, DEFENDANT

Court No. 80-12-00105

Before RE, *Chief Judge.*
On Defendant's Motion for Rehearing

[Motion denied.]

(Dated September 17, 1982)

Adler & Baker, for the plaintiffs, by *Robert S. Baker, Esq.,* of counsel
J. Paul McGrath, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch; *Sheila N. Ziff,* for defendant.

RE, *Chief Judge:* Defendant moves for a rehearing of this court's decision in *Woodrum, et al. v. Donovan,* 3 CIT ——, Slip Op. 82-60 (July 26, 1982). For the reasons which follow, defendant's motion is denied.

In *Woodrum,* this court was called upon to review a determination by the Secretary of Labor that plaintiffs, former employees of a new car dealership, were not eligible for trade adjustment assistance benefits. See Trade Act of 1974, Pub. L. No. 93-618, 19 U.S.C. §§ 2271-2321 (1976). The court remanded for further administrative proceedings, holding that the Secretary had violated the procedural requirements of the act by rejecting plaintiffs' petition without conducting an investigation, or affording plaintiffs an opportunity to request a hearing.

The court found that the procedural errors committed by the Secretary had the effect of excluding from the administrative record facts which were relevant to plaintiffs' contention that they were employed by a firm which "produced" import-sensitive articles, a condition which must be met in order for plaintiffs to be eligible for trade adjustment benefits. The Secretary's failure to follow the procedural directives of the act thus prejudiced the rights of plaintiffs. The court, therefore, remanded the matter to

[3] Interestingly, in a protective suit filed by the Government in the United States District Court for the District of Maryland on June 10, 1982 (Case No. B82-1566), these very defendants have moved to dismiss the complaint contending that the Court of International Trade has exclusive jurisdiction over this penalty action; and the Government has moved to suspend the proceedings in the District Court pending resolution of the jurisdictional issue in this Court.

the Secretary with instructions to conduct a factual inquiry into plaintiffs' allegation that Capital Chrysler Plymouth of Montgomery, Inc., of Montgomery, West Virginia, "produced" automobiles.

Defendant, in its motion for rehearing, admits that procedural errors were committed, but contends that there is no need for a factual inquiry at the administrative level. Rather, defendant urges the court to hold, as a matter of law, that under the terms of the Trade Act of 1974 only one firm can be deemed the producer of a single import-sensitive article. Applying its interpretation of the law to the circumstances of this case, defendant asks the court to take judicial notice of the fact that the Chrysler Corporation produced the automobiles sold by Capital Chrysler Plymouth, thereby excluding Capital Chrysler Plymouth from being considered a producer of automobiles.

Plaintiffs, however, seek the opportunity to prove that the process of producing new Chrysler automobiles did not end until certain tasks were performed by the employees of Capital Chrysler Plymouth. In view of this assertion by plaintiffs, the court can not rule, as a matter of law, that only one firm can be designated as a producer of an import-sensitive article. Due process requires that plaintiffs be permitted to prove their allegations. Since this opportunity can only be given at the administrative level, the matter must be remanded.

The motion for rehearing is denied.

(Slip Op. 82–79)

ARBED, S.A.; COCKERILL-SAMBRE, S.A.; KLOCKNER-WERKE A.G.; N.V. SIDMAR; and THYSSEN A.G., PLAINTIFFS, and SACILOR, ACIERIES ET LAMINOIRS DE LORRAINE; SOCIETE LORRAINE DE LAMINAGE CONTINU; SOCIETE LORRAINE ET MERIDIONALE DE LAMINAGE CONTINU; and AKTIENGESELLSCHAFT DER DILLINGER HUETTENWERKE, PLAINTIFFS-INTERVENORS, *v.* UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF COMMERCE; MALCOLM BALDRIDGE, SECRETARY OF COMMERCE; LIONEL H. OLMER, UNDER SECRETARY FOR INTERNATIONAL TRADE; LAWRENCE J. BRADY, ASSISISTANT SECRETARY FOR IMPORT ADMINISTRATION; and GARY N. HORLICK, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, DEFENDANTS, and ARMCO, INC.; and BETHLEHEM STEEL CORPORATION, DEFENDANTS-INTERVENORS

Court No. 82-9-01240

Before WATSON, *Judge*.

Opinion and Order

(Decided September 22, 1982)

Graubard, Moskovitz, McGoldrick, Dannet & Horowitz (Michael H. Greenberg and *John A. Young* of counsel) for plaintiffs *Arbed S.A.; Cockerill-Sambre S.A.; N.V. Sidmar;* and *Klockner-Werke A.G.*

Graubard Moskovitz & McCauley (Alfred R. McCauley of counsel) for plaintiff *Thyssen A.G.*

Windels, Marx, Davies & Ives (Pierre F. deRavel d'Esclapon of counsel) for plaintiffs, *Sacilor, Acieries et Laminoirs de Lorraine; Societe Lorraine de Laminage Continu; Societe Lorraine et Meridionale de Laminage Continu,* and *Aktiengesellschaft der Dillinger Heuttenwerke.*

J. Paul McGrath, Assistant Attorney General *(David M. Cohen,* Branch Director, Commercial Litigation Branch, *Velta A. Melnbrencis,* Commercial Litigation Branch on the brief) for defendants *United States,* et al.

Law Offices of *Eugene L. Stewart (Eugene L. Stewart* and *Terence P. Stewart* of counsel) for defendants-intervenors *Armco, Inc.* and *Bethlehem Steel Corporation.*

Cravath, Swaine & Moore (Joseph R. Sahid of counsel) for *amici curiae Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Inc., National Steel Corporation* and *Cyclops Corporation.*

WATSON, *Judge:* Plaintiffs, who are foreign steel producers, seek a preliminary injunction to prevent the disclosure of certain confidential business information which they have submitted to the Department of Commerce (DOC) in response to questionnaires used in antidumping investigations.

The DOC proposes to release the information in accordance with Section 777(c) of the Tariff Act of 1930 (19 U.S.C. § 1677f(c)) [1] and in response to applications for disclosure made by special counsel for Bethlehem Steel Corporation and Armco, Inc. These corporations were among the domestic steel producers whose petitions intitiated the antidumping investigations.

Plaintiffs challenge the adequacy of the applications for disclosure, the sufficiency of the need they express and, by extension, the correctness of the decision to disclose some of the information.[2] They allege that disclosure will irreparably injure them and, additionally, that considerations of the balance of hardship to the parties and the public interest combine to justify injunctive relief.

This dispute is immediately distinguishable from an earlier case involving the same information and the same parties, in which a clear violation of the statutory procedures for release of confidential information led to the granting of injunctive relief. *Sacilor, Acieries et Laminoirs de Lorraine, et al.* v. *United States, et al.* Court No. 82-5-683 (U.S.C.I.T. June 2, 1982) Here the procedures

[1] (c) Limited disclosure of certain confidential information under protective order.
(1) Disclosure by administering authority or commission.
(A) In general. Upon receipt of an application, which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).
(B) Protective order. The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

[2] The DOC does not propose to release certain of the exhibits, the computer tapes, printouts derived from the tapes and names of customers.

have been followed and the plaintiffs are focusing on the subtler question of whether the proposed disclosure is somehow arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. These are the criteria derived from 5 U.S.C. § 706 which are applicable to this action by virtue of 19 U.S.C. § 2640(d).

In essence, the need stated by the applicants for disclosure is the general need to examine, analyze and comment on the data submitted by plaintiffs so that the views of the domestic industry may be fully presented on the accuracy of the data and the calculations in which they were utilized.

These reasons are stated in various ways at pages 16 through 19 of the application for disclosure. A good example is cost of production information, which assumes central importance when cost of production replaces home market value as the starting point for determining whether the product was sold at less than fair value in the United States. The non-confidential submissions [3] provide information as to the identity of specific categories involved in the cost of production such as materials, labor, factory overhead, financing as well as selling, general and administrative expenses. For example, on the subject of materials the non-confidential summary of plaintiff Arbed, S.A. shows ten types of ore as well as separate entries for sixteen other ingredients.[4] Similarly, the non-confidential response of plaintiff-intervenor Dillinger shows entries covering eleven types of ingredients.[5] These non-confidential summaries do not provide actual costs and amounts.

The application for disclosure speaks of cost of production information as necessary to the preparation of comment by counsel on the DOC's computation of constructed value, essential to adequate and comprehensive preparation and independent review by the representatives of the domestic industry. Applicants state a need for details of selling, general and administrative expenses in order to determine the amounts of proper adjustments to cost of production and to evaluate the amounts for commercial reasonableness. Applicants also stated a need for information on yield and capacity utilization rates, profits and other cost information in order to allow them to develop the full cost of production, to compare that cost with the home market prices and then to compute the constructed value in the manner provided by the statute, all of this with the objective of meaningful participation in the investigation by the domestic industry.

The DOC's decision to disclose is expressed in the letters of September 7, 1982 from the Director of the Office of Investigations to counsel for the various plaintiffs and is further explained in an undated memorandum from the Director to the Deputy Assistant Sec-

[3] The statute, at 19 U.S.C. § 1677f(b)(1) permits the agencies in these investigations to require the parallel submission of a non-confidential summary "in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. . . ."

[4] Defendant-Intervenors Bethlehem and Armco's Exhibit 5 at D page 2.

[5] Exhibit A, Annex: D.1.1.

retary for Import Administration.[6] As to those documents which the DOC is prepared to release it recites as follows:

> We believe petitioners have a right to make informed comments regarding these proceedings. The use of non-confidential summaries of indices or bracketed amounts in place of actual data on prices, expenses, and cost precludes meaningful analysis of certain submitted data. We believe that petitioners should be allowed to comment on a broader range of pertinent issues rather than be limited to comments regarding only the methodology used by the Department in calculating margins. We have determined that the need of petitioners to have access to non-summarized material, in order to make informed comments regarding these proceedings, outweighs the need for continued confidentiality of this material.

The letters express a contrary conclusion with respect to certain other exhibits, computer tapes, printouts and names of customers. The underlying memorandum from the Director of the Office of Investigations draws a distinction with respect to computer printouts as follows:

> Such disclosure would serve no other purpose than to afford counsel an opportunity to duplicate the Department's function and role in these investigations. The purpose of disclosure in these circumstances is to afford counsel an opportunity to analyze whether adjustments made by the Department to arrive at price comparisons are appropriate, not to afford an opportunity to review calculations.

Some of plaintiffs have argued that the DOC expressly did not use their information in the preliminary determinations and that applicants therefore have no legitimate interest in that material. This point would be well taken if this dispute was tied only to the preliminary determination. However, this material and supplemental material in some cases, remains a possible source of information for the final determination and for that reason its disclosure cannot be ruled out for demonstrable lack of relevance.

The most troublesome issue for the Court has been the question raised by plaintiffs when they assert that the standard used to justify disclosure is virtually meaningless because it can always be satisfied by any party to these investigations. If anyone concerned with the outcome of these investigations can assert the general need to make informed comment or meaningful analysis, are there any real limits to disclosure?

In the *Sacilor* opinion the Court thought that it saw some indication of the limits of disclosure when it stated that the agency should not confuse the role and need of a party to an administrative investigation with that of a litigant in a court of law and further, that disclosure should not reflect an abdication of the investi-

[6] Exhibit C to Affidavit of Pierre F. deRavel d'Esclapon and Exhibits F-1 and F-2 to Supplemental Affidavit of John A. Young (filed September 13, 1982)

gative duties of the agency. This suggested the possibility of narrower access in administrative investigations because a party was not primarily responsible for the accumulation and analysis of the material needed to reach the objective of the proceeding. As it turns out, now that the Court is faced with a concrete dispute involving a rather general need, the reasoning based on distinctions between investigation and litigation begins to break down, and the decision of the agency accepting the general need to make informed comment cannot quite be called an abdication of investigative duty. The Court cannot reach a standard in which general informed comment is never a justifiable contribution to the investigation.

On the one hand we have the natural, inchoate feeling that the statutory mechanism for the release of confidential information should ideally depend on the making of sharp distinctions and precise demonstrations of need, lest it becomes a meaningless ritual.

On the other hand, there is the unavoidable fact that the law permits disclosure under a protective order and that the legislative history saw this, to a significant extent, as an important corrective to a situation in which petitioners did not have access to information presented by the exporters and foreign manufacturers. S. Rep. No. 249, 96th Cong. 1st Sess. 100 (1979). To the obvious rejoinder that this still does not provide a mandate for limitless and unreasonable disclosure the Court must respond that it does not sanction unfettered discretion in these matters. At the same time it must express a present inability to discern or articulate a more stringent working standard which can be applied in the present circumstances.

The more focused showing of specific need required in court actions in order to discover confidential information seems inapplicable here because it presumes a level of specific knowledge which it may be unreasonable to attribute to a party in these investigations. It also overlooks that aspect of the agency decision which suggests a distinction between pure duplication of its functions and that comment and analysis which will contribute to the objectives of the investigation more than it will detract from the confidentiality of information.

The Court has not been persuaded that the general need to subject certain underlying data to critical scrutiny is unreasonable, or that the verification of this data by the DOC was intended to be the limit of its exposure in the investigation.

In this respect it appears that the investigating agency has to be given some leeway in those areas in which it has a reasonable expectation that the comments and analyses of the parties will be helpful. The Court sees the operation of this discretion as one in which the central concern is not strictly what is needed by the party in order to achieve the fullest possible participation. What is central is that the needs of a party conform to, or reasonably com-

plement, the need of the agency to be as fully informed as possible in arriving at the objectives of the investigation. If this standard generates a decision that disclosure of confidential information will or will not be made, it should not be disturbed unless it either effectively disables the party seeking disclosure or grieviously underestimates a compelling need for confidentiality.

These considerations lead to what is essentially the acceptance of a range of discretion in the investigating agency to determine the degree of exposure to confidential information consistent with the objectives of the investigation and the dictates of the law. The most that can be said is that while the general reasons found sufficient here may not *compel* disclosure, they do not fall outside the realm of the agency discretion to *grant* disclosure.

Because we are now in the formative period of the administration and interpretation of these delicate matters, it must be noted that the Court's acceptance of this discretion cannot be stated with absolute finality. In this case it is simply satisfied that neither an abuse of discretion nor an avoidance of the law has taken place and a more refined analysis cannot be made.

Because the Court is not persuaded that a more exact standard for disclosure needs to be applied, or indeed, can be applied under this law, it does not see the likelihood of plaintiffs' success on the merits in this action. The other criteria involved in the granting of injunctive relief do not have to be addressed because, in a practical sense, they all hinge on an evaluation of the merits and will tend to move in the same direction.

For the reasons discussed above, the Court must deny the applications for a preliminary injunction and it is so Ordered.

(Slip Op. 82-80)

BAR BEA TRUCK LEASING CO., INC., BAR-MAR WAREHOUSE CO., INC., PLAINTIFFS, *v.* THE UNITED STATES, ET AL., DEFENDANTS

BERNARD NEWMAN, *Judge.*

Court No. 82-4-00582

On Plaintiff Bar-Mar Warehouse Co., Inc.'s Application for Counsel Fees

[Application of Bar-Mar Warehouse Co., Inc., denied.]

(Dated September 23, 1982)

Fredric J. Gross, Esq., for the plaintiffs.

J. Paul McGrath, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*John J. Mahon*, Assistant Branch Director, and *Saul Davis, Esq.*), for the defendants.

BERNARD NEWMAN, *Judge:* This matter of first impression in the Court of International Trade—constituting an application by Bar-

Mar Warehouse Co., Inc. (Bar-Mar) for an award of counsel fees and other expenses by a prevailing party pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)—ordinarily could warrant a thoroughgoing discussion of this new legislation and its applicability here. However, the facts and circumstances plainly merit a summary denial of Bar-Mar's application.

Bar-Mar seeks counsel fees and othe expenses in the amount of $12,748.25 as a prevailing party under said Equal Access to Justice Act. In pertinent part, that statute provides:

> A court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort) brought by or against the United States in any court having jurisdiction of that action, *unless the court finds that* the position of the United States was substantially justified or that *special circumstances make an award unjust.* (Emphasis added)

As to corporations, paragraph 2(b)(ii) and (iii) of the Act defines "party" as a corporation "whose net worth did not exceed $5,000,000.00" or "having not more than 500 employees" at the time the civil action was filed. Apparently, there is no dispute that plaintiff is a "party" within the meaning of the statute.

In opposition, the government has asserted that its "efforts" in this matter were both reasonable and within the special circumstances exception to the Act. I am fully conversant with the factual background of this case,[1] and I am clear that "special circumstances" make an award of counsel fees and other expenses manifestly unjust.

Among other things, in considering plaintiff's request, I cannot overlook that since 1977 Bar-Mar "just existed solely" to hold customhouse cartage license #1777 for use by the co-plaintiff (Bar-Bea) without Customs' authorization. (Tr. 393.)

Congress has plainly stated what it intended by the special circumstances "safety valve" permitting the Court to deny counsel fee awards as "unjust". Both the House and Senate committee reports explain that the Court has "discretion to deny awards where equitable considerations dictate an award should not be made." S. Rep. No. 96-253, 96th Cong., 1st Sess. at 7; H.R. Rep. No. 96-1418, 96th Cong. 2d Sess. at 11.

In a word, Bar-Mar's hands are very far from clean. On this score alone, Bar-Mar's acquiescence over a five year period in the unauthorized use of the license by the co-plaintiff constitutes "special circumstances [that] make an award unjust" within the purview of 28 U.S. § 2412(d).

Accordingly, Bar-Mar's application for counsel fees pursuant to the Equal Access to Justice Act is denied.

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[1] This Court's opinion at 4 CIT —, Slip Op. 82-64 (August 11, 1982) sets forth the background of the case.

Appeal to U.S. Court of Customs and Patent Appeals

APPEAL 82-35—LOCKHEED PETROLEUM SERVICES, LTD. *v.* UNITED STATES—METAL PRODUCTS—DRAWBACK—Appeal from Slip Op. 82-57 filed on July 21, 1982.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *September 20, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/138	Re, C.J. September 14, 1982	F.W. Myers & Co., Inc.	74-1-00209	Item 608.05 0.3¢ per lb.	Item 608.02 12¢ per ton (merchandise entered in 1971) Free of duty (merchandise entered after 1971)	F.W. Myers & Co., Inc. v. U.S. (C.D.'s 4635 and 4872)	Champlain-Rouses Point (Ogdensburg) "Atomet 28"
P82/139	Re, C.J. September 15, 1982	Audiovox Corp.	81-2-00198	Item 685.21 or 685.23 10.4%	Item 685.25 or 685.29 Free of duty under GSP by virtue of Ex. Order No. 11888 (merchandise marked "A") Item 685.25, 685.28, or 685.29 6% (merchandise marked "B")	Audiovox Corp. v. U.S. (Slip Op. 81-11, January 27, 1981)	New York Converters which are a product of eligible beneficiary country (merchandise marked "A") Converters (merchandise marked "B")
P82/140	Re, C.J. September 15, 1982	Geo S. Bush & Co., Inc., a/c Longview Fibre Company	82-1-00112	Item 661.40 11.9%	Item 661.54 2.6%	Agreed statement of facts	Portland, Oreg. "Nipco Calender"
P82/141	Re, C.J. September 15, 1982	F.W. Myers & Co., Inc.	72-8-01761	Item 608.05 0.3¢ per lb.	Item 608.02 25¢ per ton or 12¢ per ton	F.W. Myers & Co., Inc. v. U.S. (C.D.'s 4635 and 4872)	Detroit Sponge iron powder
P82/142	Re, C.J. September 15, 1982	F.W. Myers & Co., Inc.	75-3-00746-SI	Item 608.05 0.3¢ per lb.	Item 608.02 12¢ per ton or free of duty	F.W. Myers & Co., Inc. v. U.S. (C.D.'s 4635 and 4872)	Champlain-Rouses Point (Ogdensburg); Buffalo Sponge iron powder

P82/143	Re, C.J. September 15, 1982	Newport News Shipbuilding and Dry Dock Company	78-8-01414	Item 664.10 5%	Dutiable value of $3,473,254 for items covered by subject entries	Agreed statement of facts	Norfolk Parts of cranes
P82/144	Re, C.J. September 15, 1982	Nippon Kogaku (USA), Inc.	79-9-01406, etc.	Item 722.34 10%	Item 722.12 7.5%	Agreed statement of facts	New York Nikon camera motor drives
P82/145	Re, C.J. September 16, 1982	Eurasion Automotive Products	81-8-01049	Item 705.35 15%	Item 735.05 7.5%	David E. Porter v. U.S. (C.D. 4641)	San Francisco Gloves
P82/146	Re, C.J. September 16, 1982	Kay Pee Import Export	80-6-00988	Item 737.95 17.5%	Item 157.10 Free of duty under GSP by virtue of Ex. Order No. 11888	Agreed statement of facts	San Francisco Candy baseballs and bats; products of eligible beneficiary country
P82/147	Re, C.J. September 16, 1982	F.W. Myers & Co., Inc.	75-3-00746	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty	F.W. Myers & Co., Inc. v. U.S. (C.D.'s 4635 and 4872)	Champlain-Rouses Point (Ogdensburg); Buffalo; Port Huron (Detroit) Sponge iron powders
P82/148	Re, C.J. September 16, 1982	F.W. Myers & Co., Inc.	79-11-01764	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty	F.W. Myers & Co., Inc. v. U.S. (C.D.'s 4635 and 4872)	Champlain-Rouses Point (Ogdensburg); Alexandria Bay (Ogdensburg); Detroit Sponge iron powders
P82/149	Re, C.J. September 16, 1982	F.W. Myers & Co., Inc.	80-6-01008	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty	F.W. Myers & Co., Inc. v. U.S. (C.D.'s 4635 and 4872)	Detroit; Ogdensburg; Buffalo-Niagara Falls Sponge iron powders
P82/150	Re, C.J. September 16, 1982	Ozen Sound Devices Inc.	80-6-00891	Item 737.90 or 737.95 17.5%	Item 724.25 5%	Mattel, Inc. v. U.S. (C.A.D. 1248)	New York Phonograph records
P82/151	Re, C.J. September 16, 1982	Philipp Brothers, Division of Engelhard	80-7-01159	Item 629.33 12.5%	Item A629.26 Free of duty pursuant to the GSP	Agreed statement of facts	New York Floor sweeping powder

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/152	Boe, J. September 16, 1982	Elbe Products Corp.	79-5-00770, etc.	Item 359.50 30% plus 25¢ per lb. Item 355.25 15% plus 12¢ per lb. Item 355.65 8.5% Item 774.60 8.5% Item 774.55 8.5% Item 355.82 15% plus 12.5¢ per lb.	Item 771.42 6% (merchandise marked "A") Item 771.42 Free of duty under GSP by virtue of Ex. Order 11888 (merchandise marked "B")	U.S. v. Elbe Products Corp. (C.A.D. 1267)	New York Artificial leather (merchandise marked "A"); artificial leather which is a product of eligible beneficiary country (merchandise marked "B")
P82/153	Maletz, J. September 17, 1982	International Seaway Trading Corp.	67/47799, etc.	Item 700.60 20%	Item 700.70 15%, 13%, 12%, 10%, 9%, or 7.5%	International Seaway Trading Corp. v. U.S. (C.D. 4773)	Seattle Footwear
P82/154	Maletz, J. September 17, 1982	F.W. Myers & Co., Inc.	76-5-01192	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty	F.W. Myers & Co., Inc. v. U.S. (C.D. 4635 and 4872)	Alexandria Bay; Champlain-Rouses Point (Ogdensburg) Sponge iron powder
P82/155	Maletz, J. September 17, 1982	F.W. Myers & Co., Inc.	76-5-01192-SI	Item 608.05 0.3¢ per lb.	Item 608.02 Free of duty	F.W. Myers & Co., Inc. v. U.S. (C.D. 4635)	Champlain-Rouses Point, Alexandria Bay (Ogdensburg) Sponge iron powders
P82/156	Maletz, J. September 17, 1982	Sortex Company of North America, Inc.	78-1-00037	Item 712.49 10%	Item 666.25 5.5%	Sortex Co. of North America v. U.S. (C.D. 4746, aff'd, C.A.D. 1221)	New York Mineral sorting machines
P82/157	Newman, J. September 17, 1982	Uniroyal, Inc. c/o A.N. Deringer, Inc.	80-8-01216	Item 657.25 9.5% or 9%	Item 772.65 4% or 3.9%	Uniroyal, Inc. c/o A.N. Deringer, Inc. v. U.S. (Prot. Abs. P80/59)	Champlain-Rouses Point (Ogdensburg) Rubber hose, pipe or tubing in various lengths

P82/158	Newman, J. September 17, 1982	Uniroyal, Inc.	80-10-01737	Item 657.25 9%	Item 772.65 3.9%	Uniroyal, Inc. c/o. A.N. Deringer, Inc. v. U.S. (Prot. Abs. P80/59)	Champlain-Rouses Point (Ogdensburg) Rubber hose, pipe or tubing in various lengths
P82/159	Boe, J. September 17, 1982	Elbe Products Corp.	80-7-01123, etc.	Item 359.50 30% plus 25¢ per lb. Item 355.25 15% plus 12¢ per lb. Item 355.65 8.5% 774.60 8.5% Item 774.55 8.5% Item 355.82 15% plus 12.5¢ per lb. Item 220.50 18%	Item 771.42 5%	U.S. v. Elbe Products Corp. (C.A.D. 1267)	New York Artificial leather
P82/160	Boe, J. September 17, 1982	Leathers Best, Inc., et al.	78-9-01641, etc.	Item 359.50 30% plus 25¢ per lb. Item 355.25 15% plus 12¢ per lb. Item 355.65 8.5% Item 774.60 8.5% Item 774.55 8.5% Item 355.82 15% plus 12.5¢ per lb.	Item 771.42 5%	U.S. v. Elbe Products Corp. (C.A.D. 1267)	New York Artificial leather

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/489	Re, C.J. September 14, 1982	McClary Swift & Co., Inc.	80-10-01567	Constructed value	Invoice amounts, plus $.3935 per unit for stitchery styles, and $.5519 per unit for needlepoint styles	Agreed statement of facts	San Francisco Stitchery or needlepoint articles
R82/490	Re, C.J. September 14, 1982	Mitsubishi International Corporation	77-1-00082-S	American selling price	$71,820.00 less 23%, plus an amount sufficient to adjust for $1,109.81 refund previously issued at time of liquidation	Agreed statement of facts	New York Footwear
R82/491	Re, C.J. September 15, 1982	Gunze New York Inc.	80-2-00314	United States value	Appropriate values determined in accordance with guidelines as set forth in CIE 30/81 of July 20, 1981	Agreed statement of facts	San Francisco Synthetic textile piece goods
R82/492	Re, C.J. September 16, 1982	W. T. Grant Co.	73-6-01446, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Wearing apparel
R82/493	Re, C.J. September 16, 1982	S. S. Kresge Co.	75-1-00032	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	Agreed statement of facts	Portland, Oreg. Wearing apparel, etc.

R82/494	Re, C.J. September 16, 1982	Petrie Stores Corp.	74-6-01637	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Wearing apparel, etc.
R82/495	Re, C.J. September 16, 1982	Harry J. Rashti & Co. Inc.	74-10-02870	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Wearing apparel
R82/496	Re, C.J. September 16, 1982	Robeco Chemicals, Inc.	74-3-00714, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/497	Re, C.J. September 16, 1982	Spearsonic Electronics Corp.	80-11-00049	Export value	Entered value of $46.20 per dzn minus refund made by exporter of $32.50 per dzn, or $13.70 per dzn shirts	Agreed statement of facts	New York Western style shirt
R82/498	Re, C.J. September 16, 1982	Yamaha International Corp.	75-1-00023, etc.	Export value	Appraised values specified on entry papers by liquidating officer, less any additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Not stated
R82/499	Maletz, J. September 16, 1982	Perkin Elmer Corporation	79-11-01693	Export value	Invoice unit prices, net, packed representing the correct dutiable values—said prices represent the exporter's list prices less 35% discount	Agreed statement of facts	New York Electrical instruments and accessories
R82/500	Maletz, J. September 17, 1982	Chori America, Inc.	79-12-02017	Export value	Value as calculated in accordance with CIE 38/81 of October 18, 1981 and CIE of July 20, 1981	Agreed statement of facts	Honolulu Polyester fabrics and/or yarns
R82/501	Maletz, J. September 17, 1982	Chori America, Inc.	80-1-00208	Export value	Value as calculated in accordance with CIE 38/81 of October 18, 1981 and CIE 30/81 of July 20, 1981	Agreed statement of facts	Charleston Polyester fabrics and/or yarns

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/502	Maletz, J. September 17, 1982	Chori America, Inc.	80-1-00226	Export value	Value as calculated in accordance with CIE 38/81 of October 18, 1981 and CIE 30/81 of July 20, 1981	Agreed statement of facts	Norfolk Polyester fabrics and/or yarns
R82/503	Maletz, J. September 17, 1982	Glentex c/o Cluett Peabody, Inc.	79-8-01305	Constructed value	Appraised unit values without the percentage addition made by Customs to the cost of materials for overhead and profit	Agreed statement of facts	New York Gloves
R82/504	Maletz, J. September 17, 1982	Jimlar Corporation	R67/5454	Export value	Entered value	Agreed statement of facts	Savannah Footwear
R82/505	Maletz, J. September 17, 1982	Mitsubishi International	76-5-01191	Export value	Invoiced f.o.b. prices specified for each article	Agreed statement of facts	Houston Footwear
R82/506	Maletz, J. September 17, 1982	Perkin Elmer Corporation	79-2-00239	Export value	Invoice unit prices, net, packed representing the correct dutiable values—said prices represent the exporter's list prices less 35% discount	Agreed statement of facts	New York Electrical instruments and accessories
R82/507	Maletz, J. September 17, 1982	Perkin Elmer Corporation	79-2-00278	Export value	Invoice unit prices, net, packed representing the correct dutiable values—said prices represent the exporter's list prices less 35% discount	Agreed statement of facts	New York Electrical instruments and accessories

R82/508	Maletz, J. September 17, 1982	Perkin Elmer Corporation	79-11-01630	Export value	Invoice unit prices, net, packed representing the correct dutiable values—said prices represent the exporter's list prices less 35% discount	Agreed statement of facts	New York Electrical instruments and accessories

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *October 6, 1982.*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the matter of
CERTAIN HAND-OPERATED, GAS-OPERATED WELDING, CUTTING AND HEATING EQUIPMENT AND COMPONENT PARTS THEREOF } Investigation No. 337-TA-132

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 31, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), on behalf of Victor Equipment Company, Airport Road, Post Office Box 1007, Denton, Texas 76201. The complaint alleges unfair methods of competition and unfair acts in the importation of certain hand-operated, gas-operated welding, cutting and heating equipment into the United States, or in its sale, by reason of alleged common law trademark infringement, copying of trade dress, false designation of source and origin, dilution of goodwill and reputation, passing off, and copyright infringement. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct expedited temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and temporary cease and desist orders. The complainant also requests that the Commission, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR § 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 29, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation or whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain hand-operated, gas-operated welding, cutting and heating equipment and components parts thereof into the United States, or in its sale, by reason of alleged common law trademark infringement, copying of trade dress, false designation of source and origin, dilution of goodwill and reputation, passing off, or copyright infringement, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Victor Equipment Company, Airport Road, Post Office Box 1007, Denton, Texas 76201.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

I Ling Industry Co., Ltd., P.O. Box 36–889 Taipei, Taiwan, Rm. 6 3rd Fl., 50, Nanking E. Rd., Sec. 4 Taipei, Taiwan

Stillman & Associates, Inc., 2534 East Roosevelt, Tacoma, Washington 98404

Fischer Welding Products, 1905 Avenue C, Katy, Texas 77449

Tacoma Tool Company, 1513 South Tacoma Way, Tacoma, Washington 98409

(c) Robert S. Budoff, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation;

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission,

shall designate the presiding officer. The Commission notes that complainant has requested that an initial determination as to whether there is a reason to believe there is a violation of section 337 be issued within two months from the date of publication of this notice in the Federal Register. In light of this request and the allegations contained in the complaint, the Commission requests that the presiding officer give expedited consideration to the request for temporary relief. Pursuant to Commission rule 210.30(c), discovery should be allowed in connection with the temporary relief phase of the investigation only to the extent necessary to weigh the standards that are applicable in determining whether temporary relief should be granted; and

(4) The presiding officer shall also establish a schedule for oral presentations concerning the remedy, bonding, and public-interest aspects of the investigation for the purpose of creating an administrative record to be certified to the Commission five (5) days after issuance of the initial determination on whether there is reason to believe there is a violation of section 337. In addition, the presiding officer shall provide for a prehearing briefing schedule to be published in the Federal Register soliciting the written views of any persons interested in the temporary relief phase of the investigation. The transcript of the oral presentations, the prehearing briefs, and any other written materials shall constitute the administrative record concerning remedy, bonding, and the public interest to be certified to the Commission.

Responses conforming to the requirements of section 210.21(b) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.21(b)) must be submitted by each named respondent. Such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

Issued: September 30, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 701-TA-191-194 (Preliminary)

STEEL RAILS FROM THE FEDERAL REPUBLIC OF GERMANY, FRANCE, THE UNITED KINGDOM, AND LUXEMBOURG

AGENCY: U.S. International Trade Commission.

ACTION: Institution of the above-captioned preliminary countervailing duty investigations and termination of investigation No. 701-TA-189 (Preliminary), Steel Rails from the European Community.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-191 through 194 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671(b)(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the Federal Republic of Germany, France, the United Kingdom, and Luxembourg of steel rails upon which bounties or grants are allegedly being paid.

EFFECTIVE DATE: September 28, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Rausch, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0286.

SUPPLEMENTARY INFORMATION: The purpose of the institution of the above-captioned investigations and the termination of investigation No. 701-TA-189 (Preliminary) is to conform the scope of the Commission's preliminary countervailing duty investigations with those of the Commerce Department. These actions are being taken pursuant to the authority under § 207.13 of the Commission's Rules of Practice and Procedure (19 CFR 207.13).

By order of the Commission.

Issued: September 29, 1982.

KENNETH R. MASON,
Secretary.

Investigations Nos. 731-TA-110 and 731-TA-111 (Preliminary)

BICYCLES FROM THE REPUBLIC OF KOREA AND TAIWAN

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

EFFECTIVE DATE: September 24, 1982.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 731-TA-110 and 731-TA-111 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded,

by reason of imports from the Republic of Korea and Taiwan of bicycles, provided for in items 732.02 through 732.26, inclusive, of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Cates, Office of Investigations, U.S. International Trade Commission; telephone 202/523-0369.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted following receipt of petitions filed by counsel for AMF Wheel Goods Division, Columbia Manufacturing Company, Huffy Corporation, and Murry Ohio Manufacturing Company, individually and as members of the Bicycle Manufacturers Association, Inc. Nonconfidential copies of the petitions are available for public inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone (202-523-0448). The Commission must make its determination in these investigations within 45 days after the date of the filing of the petitions, or by November 8, 1982 (19 CFR § 207.17). These investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457 and 47 F.R. 6190), and particularly subpart B thereof.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission not later than seven (7) days after the publication of this notice in the Federal Register (19 CFR § 201.11). Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in the investigations. Any party submitting a document in connection with these investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR § 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR § 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submission.—Any person may submit to the Commission on or before October 20, 1982, a written statement of information pertinent to the subject matter of these investigations (19 CFR

§ 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR § 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on Octber 18, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigations, Mr. Jim McClure, telephone 202/523-0439, not later than October 13, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201), 47 F.R. 6182, February 10, 1982 and 47 F.R. 13791, April 1, 1982. Further information concerning the conduct of the conference will be provided by Mr. McClure.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: September 28, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN BRAIDING MACHINES } Investigation No. 337-TA-130

Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Donald K. Duvall as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it is the Federal Register.

Issued: September 28, 1982.

DONALD K. DUVALL,
Chief Administrative Law Judge.

Investigations Nos. 731-TA-108 and 109 (Preliminary)

PORTLAND HYDRAULIC CEMENT FROM AUSTRALIA AND JAPAN

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigations Nos. 731-TA-108 and 109 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. (1673b(a))) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia or Japan of portland hydraulic cement other than white, nonstaining portland cement, provided for in item 511.14 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: September 23, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam A. Bishop, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0291.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted following receipt of a petition filed by counsel on behalf of Kaiser Cement Corp. on September 23, 1982. Copies of the petition are available for public inspection in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. The Commission must make its determination in these investigations within 45 days after the date of the filing of a petition, or by November 8, 1982 (19 CFR § 207.17). These investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR § 207, 44 F.R. 76457 and 47 F.R. 6190), and particularly subpart B thereof. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided for in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11), not later than seven (7) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall deter-

mine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in these investigations. Any party submitting a document in connection with the investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR § 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in section 210.16(b) of the rules (19 CFR § 201.16(b)).

Written submissions.—Any person may submit to the Commission on or before October 19, 1982, a written statement of information pertinent to the subject matter of these investigations. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on October 15, 1982 at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. William Fry, telephone 202–523–0301, not later than October 12, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201). Further information concerning the conduct of the conference will be provided by Mr. Fry.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: September 27, 1982.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN BRAIDING MACHINES } Investigation No. 337-TA-130

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint and its amendments were filed with the U.S. International Trade Commission on August 18, 1982, and September 10 and September 13, 1982, respectively, under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), on behalf of New England Butt Co., Division of Wanskuck Co., 304 Pearl St., Providence, Rhode Island 02907. The amended complaint (hereinafter the complaint) alleges unfair methods of competition and unfair acts in the importation of certain braiding machines into the United States, or in their sale, by reason of alleged common-law trademark infringement, false designation of origin, and passing off. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct expedited temporary relief proceedings, issue temporary exclusion and cease and desist orders, and, after a full investigation, issue permanent exclusion and cease and desist orders.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR § 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 24, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain braiding machines into the United States, or in their sale, by reason of alleged common-law-trademark infringement, false designation of origin, and passing off, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: New England Butt Co., Division of Wanskuck Co., 304 Pearl St., Providence, Rhode Island 02907

(b) The respondents are the following company and individual, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kokubun Inc., Nakajimacho, Hamamatsu, Japan

Mr. George Sabula, Box 163–A, McEntire Road, Route 1, Tryon, North Carolina 28782

(c) Patricia Ray, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer. The Commission notes that complainant has requested that the administrative law judge schedule a hearing to be completed within a short period after institution of the investigation and issue an initial determination as to whether there is a reason to believe there is a violation of section 337 within thirty (30) days after the close of the hearing on temporary relief. In light of this request and the allegations contained in the complaint, the Commission requests that the presiding officer give expeditious consideration to the request for temporary relief. Pursuant to section 210.30(c) of the Commission's rules, discovery should be allowed in connection with the temporary relief phase of the investigation only to the extent necessary to weigh the standards that are applicable in determining whether temporary relief should be granted.

Responses conforming to the requirements of section 210.21(b) of the Commission's rules (19 C.F.R. § 210.21(b)) must be submitted by each named respondent. Such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein or appended thereto, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Sec-

retary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0176.

FOR FURTHER INFORMATION CONTACT: Patricia Ray, Esq., Unfair Import Investigations Division, Room 126, U.S. International Trade Commission, telephone 202-523-1088.

By order of the Commission.

Issued: September 24, 1982.

KENNETH R. MASON,
Secretary.

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